NOTES OF CASES.

Banks and Banking—Inspection—Police Power.—In Bank of Oxford *v.* Love, in the Supreme Court of Mississippi (June, 1916, 72 So. 133), it was held that the State Banking Act of 1914 of Mississippi (Laws 1914, chap. 124), providing for the examination of banks and their liquidation in case of insolvency, or if they shall be doing business on less than the minimum capital allowed, etc., is an exercise of the police power and applies to a bank chartered by prior special act declaring that its business shall be confided to and controlled by the stockholders under such rules of law and requirements as the company may see fit to adopt, provided the same be not in conflict with the State and Federal Constitutions, as by chartering the bank the Legislature could not waive its right to exercise its police power.

Sharing of Official Salary under Business Partnership Agreement.—In Shinn *v.* Shinn, in the Supreme Court of Appeals of West Virginia (March, 1916, 88 S. E. 610), it appeared that R. P. Shinn and his brother, J. O. Shinn, owned a farm jointly, and for many years were partners, dividing equally the profits of their business. R. P. Shinn was elected sheriff of his county, and by an agreement between them J. O. Shinn was to continue the farming business and R. P. Shinn was to act as sheriff (J. O. Shinn having no connection with the office of sheriff). All the expenses of the office, including election expenses, were to be paid from their partnership funds, and the profits arising from the office, together with the profits arising from the farm, were to be placed in a common fund and divided equally between them. It was held that this was not an illegal contract on general principles, nor a violation of a provision of the West Virginia Code prohibiting the sale or letting to farm of a public office. Although the discussion on this point is not very full, and no authorities are cited, the decision is of considerable interest, because in the last preceding decision to our knowledge in a court of last resort on a substantially similar question the contrary view was taken (Anderson .*v* Branstrom, in the Supreme Court of Michigan, 1912, 139 N. W. 40). The West Virginia court reasons the matter as follows:

"Under the contract the plaintiff did not sell or let to farm, either in whole or in part, the office. The defendant did not become sheriff or deputy. He acquired no official position. The arrangement, so far as the court can see, was a perfectly legal one. The brothers owned a farm jointly. They had long been partners. One of them was elected sheriff. The other continued the farming business. They agreed that the profits of all the business, including the sher-

iffalty, should be divided equally between them as the profits of their business had been divided for many years. For the time being one was a sheriff, the other a farmer. Their earnings went into a common fund, and were divided between them. We can see no wrong in this."

The decision is in accord with that of the General Term of the New York Supreme Court, Third Department, in Thurston *v.* Fairman (9 Hun 584). There it appeared that the partners of a firm agreed that all salaries from any office or employment should be the property of the firm. The court recognized the rule that an assignment of the salary of a public officer before it becomes due is contrary to public policy and void, saying, however:

"But the case in hand is not that of an assignment of an unearned salary, when all control over the expected funds, even to their reception in the first instance, is passed over to another. It is but an agreement as to the manner in which the salary shall be employed or disposed of when earned and paid. The parties took upon themselves an obligation, that is, bound themselves one to the other, as to the manner in which salaries, perquisites, etc., received by them respectively should be applied or employed when received. The case as between them rested in contract, and their agreement involved only personal interests. The agreement did not take away from the parties the right to receive their salaries at such periods as the law appointed for their payment. Its effect was not to impair their obligations as public officers, or to present inducements to inefficiency or unfaithfulness in the performance of their public duties. All incentive to efficiency and fidelity in the public service remained unimpaired by their personal stipulations in regard to the disposition of the funds when received. We are therefore of the opinion that no principle of public policy is involved in the clause of the agreement here considered, which should relieve the parties from its performance."

In Anderson *v.* Branstrom (supra) it was held that a partnership agreement between two lawyers to divide equally the salary of the office of prosecuting attorney to which one of them was elected, was contrary to public policy as being, in effect, an assignment of unearned emoluments of a public office. The opinion of the majority is very brief, and that of the chief justice, who dissents, is quite elaborate and forcible. Speaking of this decision on a former occasion we said:

"The circumstances of the principal case were very 'raw.' They involved much preliminary 'dickering' between the partners as to the disposition of a public office and its salary. Where one lawyer agrees not to run again for the office of prosecuting attorney and agrees to assist another lawyer in securing it, for the mutual benefit of the two parties, it is evident that the interest to be taken in the

election is not at all limited by a motive for procuring the most efficient public service. It is not surprising that under the facts shown the majority of the Michigan court determined that the official salary of the district attorney ought not to be treated as a firm asset. The opinion of the majority is very short and it would seem that the point of 'assignment of the unearned emoluments of a public office' was employed as the most available expedient for the actual decision to be made."

On the other hand, it had been held by the same court in McGregor *v.* McGregor (130 Mich. 505), in harmony with the distinction drawn in Thurston *v.* Fairman (supra), that an agreement by a boiler inspector that his salary, when earned, should become assets of the partnership of which he was a member, was not against public policy as an assignment of unearned salary by a public officer, but merely affected the disposition of the salary after it should have been earned and paid. Recognizing the possibilities of abuse in any arrangement of this kind, we adhere to the view formerly expressed that the distinction taken in Thurston *v.* Fairman (supra) and McGregor *v.* McGregor (supra) should, on balancing considerations pro and con, be recognized. Mr. Greenhood, in his work on Public Policy (p. 351), lays down rules as follows:

"The salary or emoluments of a public officer, except when they are already earned, the pension or half-pay of one who is or has been a public officer, when the same is not reserved until after his decease or past due, are all incapable of assignment except when the assignor derives no benefit from such assignment until the subject thereof is earned, and the assignment is but a part of a legitimate business scheme."

BOOK REVIEWS.

All book reviews are by the Editor-in-Chief unless otherwise expressly stated

American and English Annotated Cases—Containing the Important Cases Selected from the Current American, Canadian, and English Reports. Thoroughly Annotated. Editors, William M. McKinney and H. Noyes Greene. Ann. Cas. 1916D. Edward Thompson Company, Northport, L. I., N. Y. 1916. Bancroft Whitney Company, San Francisco 1916. Price $5.00.

We find this volume up to its usual standard in every way. The following notes have struck us as of unusual interest: "Person to Whom Rent is Payable in Absence of Governing Statute in Case of Sale, Mortgage, or Other Grant or Reversion." "Effect of Partial Invalidity of Statute," on page 9, is a valuable treatise on this subject.